Missouri Department of Natural Resources

MINUTES OF THE LAND RECLAMATION COMMISSION MEETING

January 30, 2003

Chairman Ted Smith called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

Commissioners Present: Ted Smith; Jim DiPardo; Mimi Garstang; Jim Hull; Bob Ziehmer; and Hugh Jenkins.

Staff Present: Larry Coen; Dennis Stinson; Tom Cabanas; Mike Larsen; Greg Anderson; Bill Zeaman; Richard O'Dell; Larry Hopkins; Greg Sharp; Steve Femmer; Tim Thorn; Andy Reed; Rexroy Scott; Teri Walker; Trish Sillman; and Shirley Grantham.

Others Present: Amy Randles, Attorney General's Office; Steve Rudloff, Missouri Limestone Producers Association; John Coleman, Office of Surface Mining; Mikel Carlson, Gredell Engineering Resources; Kim Dickerson, Associated Electric Coop., Inc.; Jim Lunan, Holcim (US) Inc.; Carla Klein, Sierra Club; Gerard Gregg and Steve Winkelmann, Central Stone; Steve Poplawski, attorney for Central Stone; James and Marilyn Sharkey; Riley O. Godfrey; Bob Hentges, Missouri Public Utility Alliance; Fred Granneman; Jeff Rylee, B & B Sand and Gravel; Bob Parker, Farm Bureau; Russell Wood; David Taylor; John Wenzlock, Trout Unlimited; Richard Dellerman; Linda Garrett, Texas County Commission; Betty Adams; Jim Dunn, Senator Steelman's office; Daniel R. Schuette and Alice Geller, Missouri Department of Natural Resources; Robert Reid, City of Lake Lotawana; John Kirse; Frances Grossman, Lake Lotawana Association; William and Margaret Powelson; Maridel Koenig; Sharon Broeckelmann; Paul Bass; Dennis and Betty Rains; Bonnie Weekley, Robert H. Mardis, Daniel M. Koenig, and John Kosmicke, Concerned Citizens of Southern Lincoln County; Jay D. Haden and Mark Trosen, Jackson County; Don Weckley; Robin Kramer, attorney for Lake Lotawana; David M. Trickey, Trenton Sand Company; Norm Hoener, Hoener Truck and Excavation; Brett Geger, APAC; Robert L. Temper, Ozark Fly Fishers; Phil Tearney, Continental Coal, Inc.; Ted Heisel, Missouri Coalition for the Environment; N. Tunyavanich, Meramec Regional Planning Commission; Jim Huckins; Sandra Ball, Shell Engineering & Associates; Cindy Peterson, Peterson Gravel & Ready Mix; Anthony Barber, Barber & Sons Company; and Philip Graham, attorney for Barber and Sons.

1. MINUTES OF THE NOVEMBER 21, 2002, MEETING

   Mr. DiPardo made the motion to approve the Minutes as written. Mr. Jenkins seconded; motion carried unanimously.

2. PRESENTATION OF RESOLUTION

A Resolution was presented to Mr. Brett Geger for his service to the Land Reclamation Program, Commission, and the State of Missouri.

3. ABANDONED MINE LAND ACTIVITIES

AML Status Report (Attachment 1). Mr. Stinson presented this report to the Commission. He stated the Program had been contacted by the City of Mindenmines, Missouri, about utilities slumping from the highwall into a pit. The staff inspected the site and in working with the Office of Surface Mining, it appears this will qualify as an emergency project. The utility poles will be stabilized, and the highwall will be subsequently backfilled to stabilize it. Approximately $200,000.00 of emergency funds will be received from OSM for this project.

Bond Forfeiture, Universal Coal & Energy Co., Permit 1982-25, Renick Site, Liability Release Request (Attachment 2). Mr. Stinson stated this area was permitted for 9 acres and was used for the purpose of assembling a dragline. No actual mining was done on this site. Disturbance to this area consisted in the stockpiling of topsoil, construction of a concrete pad, disposal of various trash and debris, and placement of rock for parking purposes. Reclamation of the site consisted of the removal of the concrete pad, trash, debris, and rock; redistribution of the topsoil; and vegetation of the areas where topsoil was placed. Vegetation throughout the site has been determined to be sufficient to control erosion. The reclamation is in accordance with the approved plan. Phase III productivity studies are not required for release of bond forfeiture projects per agreement with the Office of Surface Mining. The permittee will be placed on the Applicant Violator System for deficiencies related to Phase III performance standards. It is the staff's recommendation that the Land Reclamation Commission approve the liability release for the 9 acres associated with Permit 1982-25 so the land can be returned to the landowner and the Program can discontinue the maintenance of it. There is no money amount associated with the release, as forfeited bond moneys were used to reclaim the site.

Mr. Hull made the motion that the above liability release request for the Renick site under Permit 1982-25 be approved. Mr. DiPardo seconded; motion carried unanimously.

4. PERMIT ISSUES

Request for Hearing – Barber and Sons Company (Attachment 3). Mr. Zeaman presented several letters to the Commission requesting the Commission deny the permit to Barber and Sons Company and that a hearing be held. The first letter is from Senator Matt Bartle which states that the current quarry operation is in conflict with

surrounding development. Mr. Zeaman stated the letter from Senator Bartle also states that the dust, large trucks traveling the surrounding roads, and blasts coming from the site are disruptive to local residents and have the potential to substantially lower property values if allowed to expand further. Barber and Sons has applied for, and been denied, applications to Jackson County and the City of Lake Lotawana to expand their mining operations. A letter from Mr. John Kirse states he disagrees with the interpretation of the terms "contiguous" or "adjacent" made by the Commission. Mr. Kirse also states that there is constant wind borne dust coming from the quarry. Mr. Zeaman stated proposed changes to The Land Reclamation Act were presented to the Commission at its May 2002 meeting. The changes were the result of the adoption of House Bill 453 by the Missouri General Assembly. These changes included text defining "contiguous" as actual contact, touching along a boundary or at a point and defining "adjacent" as immediately opposite from, as in across a road right of way, or across a river or stream. The key word is "immediately." Further: "Whenever a mine plan boundary remains within a given property boundary and does not touch that boundary," the Program has been directed that nearby landowners are not considered as adjacent. However, if the long-term mine plan boundary touches the property boundary and there is a road, the persons on the other side of the road are considered adjacent.

Mr. Zeaman stated the Program received a permit expansion application from Barber and Sons Company in August 2002. This proposed permit expansion application would increase their mine plan boundary to a total of 2,150 acres. The company already has 400 acres bonded at this site. The remaining 1,750 acres would most likely be bonded in the future as allowed. The proposed mine operation time frame is to the year 2077. A public notice was published in a newspaper that has circulation in the area beginning in October 2002. In addition, the company also sent by certified mail a notice of intent to operate a surface mine to the appropriate planning officials. The proposed mine plan boundary remains within the property boundary; therefore, nearby landowners were not sent a notification of intent to operate a surface mine. During the public comment period following the initial publication of the public notice, the Program received eight letters concerning this proposed permit expansion application. The Land Reclamation Act addresses issues of public notification requirements, mining and the environment, permit denial, request for permit application material, and a request for a hearing. The Department also has laws that address air pollution. However, the Department does not provide protection concerning travelway safety issues, detonation of explosives at a limestone quarry, property devaluation, noise pollution, and planning and zoning issues. Barber and Sons Company has completed all the requirements to obtain a permit under The Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letters, it is the Staff Director's recommendation to issue the permit expansion application for 2,150 acres in Jackson County requested by Barber and Sons

Company. Mr. Zeaman stated the recommendation for approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act does not weigh against the surface mining of minerals in this instance; therefore, the recommendation is to approve this application.

Ms. Garstang asked why the nearby landowners were not notified?

Mr. Zeaman stated that a work group developed the newly proposed rules. As a result of the newly proposed rules, staff now determines "contiguous" and "adjacent" landowners as property that is immediately adjacent to a proposed mine plan boundary.

Ms. Garstang asked why would the persons next to the operation not be notified?

Mr. Zeaman stated it is because the mine plan boundary remains within and does not touch the property boundary. In this case, the mine plan boundary remains within about 150 feet of the property owned by Barber and Sons.

Mr. Smith noted there is the property boundary and the company is totally inside that. The definition the staff has applied is the actual mine boundary if it were taken all the way to the property line. In this case, it is 150 feet.

Mr. Hull asked if any operation such as this ever extends to the property boundary?

Mr. Zeaman stated yes. For example, Central Stone Company, Moscow Mills Quarry.

Mr. Philip Graham, attorney for Barber and Sons Company, stated the issue before the Commission today is whether or not the Barber application has complied with the legal requirements of the Land Reclamation Commission. The Staff Director's recommendation outlines those factors that can be considered by this Commission in approving or denying this request as well as those factors which cannot be considered. The issues outlined in Senator Matt Bartle's letter—travelway issues, blasting, property devaluation, noise, and planning and zoning issues--are outside the purview of this Commission by statute. There is no evidence contained in this letter or others that would give rise to standing for this body to use its resources to conduct a public hearing into this matter and spend additional time beyond the investigation that has already been done in connection with the Staff Director's recommendations. It should be pointed out that this is not about personal animosity or hostility or not liking the mine. This is about whether the application complies with the law. The application does comply with the law. There may be other bodies that may have an interest in this. This body is concerned with whether the Barber and Sons application complies with the Land Reclamation

Commission laws and regulations. Mr. Graham stated the Staff Director has found that it does comply; and, therefore, this Commission should issue the permit without any additional hearing or meetings with this body.

Mr. DiPardo asked whether this quarry was originally started by Barber and Sons or is this a quarry that was already there and the company purchased it or is it a new operation?

Mr. Graham stated this quarry was started by Barber and Sons.

Mr. Barber stated there were two existing quarries on the property. One was mined by the county in the 1930's through 1952. Another operator had a quarry there that was already in effect. Both sites had been abandoned prior to their takeover by Barber and Sons. There was no active quarry prior to that takeover.

Robin Kramer, an attorney in the Kansas City area representing the City of Lake Latawana in its request for a hearing by this Commission on the issuance of the surface mining permit to Barber and Sons, noted that Program staff indicated that public notice was published in the *Kansas City Star* and the appropriate city planning agencies were notified. She stated that was not correct. The City of Lake Latawana, whose boundaries the Barber and Sons quarry is located, was not notified until she wrote a letter at the termination of the notice period, asking for a hearing and information, at which point the City of Lake Latawana was finally notified. Similarly for Jackson County, the county was not sent notification. No one was sent notification, as required by the law, until they asked to be sent notification. They are requesting a hearing on the issuance of a permit to Barber and Sons. They disagree with what has been stated that the Commission can consider in issuing a permit. According to Section 444.722 of The Land Reclamation Act, 444.762, it sets forth the policies of the State in the matter of surface mining minerals and the State's goal in balancing surface mining and various other issues, among which is to protect and promote the health, safety, and general welfare of the people of the State. There is nothing in The Land Reclamation Act which limits this Commission's consideration. The terms—safety and general welfare—are widely used; and Missouri courts have frequently been called upon to interpret them. The only case dealing with the Land Reclamation Commission's issuance of a permit, the Court of Appeals specifically said that the goal was to protect and promote the health, safety, and general welfare of the people and that this section describes a broad policy demanding protection for health, safety, and general welfare of the Missouri citizens. That was the court's interpretation of what Section 444.762 meant. Ms. Kramer stated that health, safety, and welfare have been determined by Missouri courts to include regulation of building, character of neighborhood, traffic conditions, public utility facilities, consideration and regulation of noise, safety of boilers, smokestack, other facilities, sanitation, unwholesome trades, slaughterhouses, operations offensive to the senses.

Ms. Kramer stated all of these things and others have been determined by the courts of the State of Missouri to be in the purview of health, safety, and general welfare; and, therefore, these are things this Commission should consider, rather than simply air quality. One of the things that health, safety, and general welfare allows is zoning. It has been recognized that the purpose of zoning is to promote the health, safety, and general welfare. Therefore, the goals of zoning and Section 444.762 are identical to preserve and protect the health, safety, and general welfare of Missourians. The statutory zoning enabling act provisions, both for county and city, in the *Missouri Code* authorize the adoption of zoning regulations for the purpose of promoting health, safety, morals, or the general welfare. If a surface mining operation is prohibited by a zoning ordinance, which is adopted under government police powers, which is the power to protect the health, safety, and welfare, then the Commission's issuance of a surface mining permit to conduct surface mining on such property would conflict with the protection of the public's health, safety, and welfare, since the local government had already determined that the health, safety, and general welfare was not furthered by the granting of a permit for surface mining. Therefore, in considering whether to grant this permit, the Commission must consider zoning and planning issues. It is entitled to and it must, to conform to the requirements of law.

Ms. Kramer stated the land in question is in the City of Lake Latawana, having been annexed in 2001. The City of Lake Latawana has not yet adopted its own zoning, and under Missouri law, the county zoning remains. Under county zoning, quarrying is not permitted without a special permit. The Barber and Sons have three special permits on their property which they are currently operating under, copies of which she presented to the Commission. The City is considering new zoning regulations. No surface mining or quarrying is currently allowed, although there is something called the floating zone, which is being considered by the City, which may be permitted to allow for future zoning. To the extent that Barber and Sons has an existing permit, that permit is valid. The company has a permit for underground mining and does not have a special permit for surface quarrying. Barber and Sons currently has a special use permit to operate a quarry now. The special use permit was issued in connection with his application to the county. The special use permit is part of the process of zoning and furtherance of health, safety, and welfare of the State. Those permits do not allow surface quarrying. In fact, in one of the applications for the permit, there is the specific condition that Barber and Sons will never surface quarry certain portions of the property for which he has permits for underground mining. The issuance of a surface mining permit would be in complete violation of that, and the City believes that the Commission, at the very least, consider it here. Ms. Kramer stated the natural drainage paths from the quarry property flow into the lake. They felt the Commission needs to consider more than simply impact on air quality and whether Barber and Sons has technically complied with the requirements of the statute.

Ms. Garstang asked whether the permit that Barber and Sons has for underground mining, is that with Jackson County?

Ms. Kramer replied yes.

Mr. John Kirse stated he lives across the road from the Barber and Sons property. The property line is approximately 75 feet. He stated he disagreed with the interpretation that has been given for "contiguous" and "adjacent." The dictionary says "contiguous" also means near, but not in contact. The first definition of "adjacent" is lying near or close, neighboring. He stated his property is certainly near, close, and neighboring. Further, in any case, assuming the mining buffer zone provided is adequate protection against strip mining for his safety and health, and, thus, not giving him notice of impending disaster is quite incredible. Mr. Kirse stated he felt the Commission should delay its consideration of its decision until proper notice can be given to all of the affected property owners and they be given time to present their arguments before the Commission and any hearing that it may set. He stated that over 100 people are involved in this "adjacent" definition. The Commission's decision will affect all of them. He noted that the Staff Director states in his Recommendation, "If the Commission finds based on competent and substantial scientific evidence on the record of the hearing, that an interested party's health, safety, or livelihood will be unduly impaired by the issuance of that permit, the Commission may deny such permit." The property owners adjacent to the Barber and Sons property certainly are interested parties, and Barber and Sons' ongoing record of windborne dust is certainly a continuing hazard to their health and will be amplified by the request for the expansion of the current mining operation. Also, certain landowners depend on their land for their livelihood, such as cattle and horse raising, horse boarding and training, and other businesses. The property owners believe that competent and substantial evidence can and will be presented at a hearing confirming the hazards to their health, safety, and livelihood which would allow the Commission to deny the expansion permit. He therefore requested such a hearing.

Ms. Frances Grossman, administrator of the Lake Latawana Homeowners Association, stated she represented the 1,200 homeowners that surround Lake Latawana who are definitely adjacent to the mine, not only physically, but through water discharge and air pollution.

Mr. Smith asked if most of those homes are around the lake itself or are they out in outlying areas?

Ms. Grossman stated the homes all surround the lake, downwind and downstream of the quarry. She stated they also feel the effects of blasting.

Mr. Smith asked if there are multi-family residences currently being developed in that area?

Ms. Grossman stated no. There are only single-family residences. That is one of the restrictions.

Mr. Jay D. Haden, County Council for Jackson County, stated he is requesting a public hearing. The legality of the City of Lake Latawana's annexation of the Barber and Sons quarry is the subject of a lawsuit now pending in the Circuit Court of Jackson County. The county has taken no formal position on this issue in the lawsuit, but he stated his personal belief is that the City has the better view on whether the annexation is legal. If the annexation is determined by the court to be invalid, the property will remain a portion of incorporated Jackson County and subject to the county's jurisdiction under its Unified Development Code for purposes of planning and zoning. He stated he felt the City was correct in their view and that the Staff Director has taken a very narrow view of the definition of health, safety, and general welfare. The county requests a public hearing because it wants to be able to argue fully its position that the Barber and Sons should not be given a surface mining permit until and unless the company complies with all city or county applicable zoning requirements regarding surface mining. He distributed a summary of the conditions of the county's existing three special use permits for Barber and Sons. Attached to that summary is a map that shows the permitted boundaries and the position of the lake and the residential development around the lake as it relates to the quarry property. Mr. Haden stated that the county has never given a permit or permission for surface mining. The county has only permitted underground mining and a period of surface preparation with regard to the undertaking in preparation for the underground mining. That permit for the surface preparation expires in 2006.

Ms. Garstang asked Mr. Haden regarding the issue of notification—was the county notified?

Mr. Haden stated the county was not aware of the proposed expansion request for Barber and Sons until the day before the day the comment period was to close. A letter was faxed to the staff requesting a hearing. Shortly after that, the county received its notice.

Mr. Smith asked the staff if the Barber and sons application specifically states the nature of the mining, whether it be underground or strip?

Mr. Zeaman stated the expansion request is for a strip mining permit. He stated he was not aware of any permitting of underground mines. He stated the Program is only limited to the portals or the openings of an underground mine.

Mr. Rob Reid, alderman for the City of Lake Latawana, stated he was confused and concerned that time is being spent discussing a reclamation plan for mining that is not possible under the permit that Barber and Sons currently holds and will not be possible in the future. As a member of the Board of Aldermen that will have to vote and approve any expansion of the current mining operation for Barber and Sons, it will unlikely happen. He stated a hearing is being requested for the following reasons. In the past, Barber and Sons has violated reclamation permits by mining substantially more than 40 acres they are permitted to mine at the time. This violation was recognized by the Director of the Missouri Department of Natural Resources (MDNR). The Missouri Attorney General's Office referred these violations to the Jackson County Prosecutor for prosecution. He stated that Barber and Sons has received over 20 notices from the MDNR for violation of air quality standards, some as recent as 2000, and 2 violations of water discharge standards. He showed pictures to the Commission showing the water discharge. The quarry flows into the south end of the lake.

Mr. DiPardo asked if the discharge shown was that of a normal day or was there a flash flood?

Mr. Reid stated he was not sure, but felt there was a certain amount of rainfall involved with that discharge.

Mr. Reid stated that, in the past, the Missouri Attorney General's Office has filed suit against Barber and Sons for 8 air permit violations. The company paid $40,000.00 in fines and agreed to make specific improvements to address the violations. In 1994, the Missouri Conservation Commission sued Barber and Sons for silt damage to a nearby wildlife area. The Barber and Sons mining operation has accrued 142 safety violations since 1986, including several air quality violations and a fatality. In February 1998, Barber and Sons was fined by the EPA for violating the Clean Air Act and was found to have provided the EPA with misleading and inaccurate information in the process of resolving these violations. Mr. Reid stated that his understanding of Section 444.773, RSMo, indicates that a hearing to review a proposed reclamation permit should be held when a request is received by an interested party, prior to the notice of recommendation, whose health, safety, or livelihood would be unduly impaired by issuance of the permit. He stated he felt the past record of Barber and Sons clearly indicates that standard has been met and, on behalf of the City, requests such a hearing, preferably held at a location convenient to the residents of the City and county who are affected by this action.

Ms. Garstang asked what was the date of the original violation issued by MDNR?

Mr. Reid stated it was 1990.

Mr. Graham, attorney for Barber and Sons, stated with regard to past violations, the Missouri Court of Appeals, in the Lincoln County Stone decision in 2001, indicated that, in that case, the Commission should do two things: 1) look at violations of sister or affiliated companies in connection with a reclamation permit; and 2) that it could look at past violations up to five years back in time. But, in and of themselves, the past violations is not a test for denying a permit. In that case, the Commission took the position that the violations of that operator were no more typical in severity or number than other typical operators of that same size. He stated that Barber and Sons' record during the last five years certainly speaks of that. In fact, in 1999, the Commission released Barber and Sons' bond and liability with respect to 70 acres because of the reclamation that had already been done. The evidence is that Barber and Sons has complied with the reclamation plan well enough that that bond and liability was released.

With regard to planning and zoning and whether this Commission should get involved with those decisions, Mr. Graham stated that if this Commission were to concern itself with planning and zoning and whether or not the proper approval was obtained, that this Commission would never be able to fill its statutory charge which is to determine whether a mine plan and reclamation plan meet the requirements to obtain a permit. He stated that per the Staff Director's Recommendation, this permit would not allow Barber and Sons to violate any other laws. There may be other issues, but not ones for consideration by this Commission. Otherwise, this Commission would find itself mired down and running the planning and zoning boards in various communities in the State of Missouri, which it cannot do under its statutory charge.

Mr. Graham stated that with regard to the statutory or regulatory definition of adjacent, the regulations and laws are what this Commission is charged to follow.

Mr. Hull noted there have been indications noted that there have been certain violations of multiple zoning. Has Barber and Sons received any citations or notices of violations that it is operating a quarry operation in Latawana's zoning and planning requirements?

Mr. Graham did not know that the company had recently. There have been issues in the past regarding zoning. There is currently a contested issue of who has the zoning authority, whether it be the City of Latawana or Jackson County, which is scheduled for trial in September 2003.

Mr. Smith asked the staff regarding any violations issued.

Mr. Zeaman stated The Land Reclamation Acts states that only when a hearing is granted, then the history of past violations is looked at. The only thing that we can consider now is whether or not Barber and Sons or an affiliated company have ever had a permit revoked by the Land Reclamation Commission.

Mr. DiPardo stated he relies on the input from the staff and the Staff Director. If they recommend moving forward with this permit, then it should be so. If there are other issues outside the Commission's limitations, then that needs to be settled somewhere else. Mr. DiPardo stated he felt the Commission should move forward and grant the permit. If there are legal matters, they need to be taken elsewhere.

Mr. Smith stated in reference to the Staff Director's Recommendation to the Commission, the granting of this permit does not grant Barber and Sons the authority to bypass any other laws or regulations, whether they be zoning or county laws or with regard to water or clean air. This is one step in the whole process for them to move forward on. Whether or not Barber and Sons can get a strip mining permit or whether the operator has to stay underground, is an issue that the Commission cannot resolve. It is a question of whether Barber and Sons has completed the requirements for their permit.

Mr. Jenkins questioned whether the notice that was given the residents of the area of the quarry was timely, and if they have been denied the opportunity to produce evidence that there is an adverse affect to their safety and livelihood, they have been denied the opportunity to present the Commission this evidence which would deny them the opportunity to get the evidence they need to request a hearing. If the City was not notified and the proper parties were not notified, they have been denied their opportunity to produce that evidence and bring it to the Commission.

Mr. DiPardo asked whether the persons had been given proper notice?

Mr. Coen stated that when the staff learned that the incorrect notifications were sent to the local authorities, the staff directed Barber and Sons to take care of this and the public notice was started over again and gave the public another 45 days to comment.

Mr. Jenkins asked when the City stated they received notification one day prior to close of the comment period, was that the first time?

Mr. Coen stated it was the first time.

Mr. Jenkins noted therefore there was notice given.

Mr. Smith asked if there was nothing sent to the property owners around because of the "adjacent" and "contiguous" issue?

Mr. Coen stated that is correct.

Mr. Jenkins questioned "contiguous" and "adjacent" and whether all residents in the area were given the proper legal notice.

Mr. Jenkins stated he was not comfortable with the adjacent landowner issue. If there is a 6-inch border around something, does that mean that defeats the definition of an adjacent landowner?

Mr. Smith stated it is obvious some form of notice did go out, because there is one property owner, the Homeowners Association, and representatives from the city and county present today. It appears that a large portion of the land is owned by Barber and Sons.

Mr. Jenkins stated if the company wants to proceed and let persons know what they are doing, they need to give notice and give people an opportunity to be heard and that the permit not be issued.

Mr. Smith asked if the Commission does not issue the permit now, is that rejecting the application and making the company start over?

Mr. Coen stated it would depend on the exact wording of the motion. The Commission could table the issue until the next meeting to cause the additional notification to occur. If the Commission votes to deny the permit, then a new permit may have to be submitted.

Mr. DiPardo asked who was not notified?

Mr. Jenkins asked how many other landowners are around this area within 50 feet of the border? He stated he assumed there were houses all over the area. The residents may know about this issue, but were they given legal notice—did they get the notice they should have gotten?

Ms. Garstang stated there is the lake area with a lot of homes and there are homes to the west. Have they been notified?

Mr. Jenkins stated he felt that if someone lives 50 feet away, that person is an adjacent landowner.

Mr. Smith asked Ms. Randles if no action is taken on the granting of the permit today, is it also correct as far as taking any action on the hearing?

Ms. Randles asked if the Commission would then be directing the company to give notice to adjacent landowners or simply giving them the opportunity to do so between now and the next meeting?

Mr. Smith asked that until the Commission takes formal action on the permit, the hearing issue still stays?

Ms. Randles stated that is correct. The hearing issue stays and the question of whether the Commission is granting the application for the permit is still also an open question.

Mr. Jenkins made the motion to table any action on the granting of the permit to Barber and Sons until the March 27, 2003, meeting. Ms. Garstang seconded; motion carried. Mr. DiPardo and Mr. Smith voted "no."

Mr. Cabanas stated that between now and the March Commission meeting, he has some proposed rules that he needs to file. These rules contain a rule change that defines adjacent property. He asked the Commission what guidance they would like to give the staff at this time with regard to this issue, because it sounds like a rule will be filed soon that will be in conflict with what Mr. Jenkins has proposed. Mr. Cabanas stated he would rather not start over with another rule change as soon as a filing is made. Is it the Commission's wish that he hold off the filing of these rules?

Mr. Smith stated that, considering the circumstances, the staff should wait until the next Commission meeting before Mr. Cabanas files the above rules.

Request for a Hearing – Central Stone Company, Moscow Mills Quarry (Attachment 4). Mr. Zeaman stated that in October 2002, the staff received a permit expansion and transfer application from Central Stone Company for a total of 206 acres at their proposed Lincoln County site. After the application was deemed complete, the company published the public notice and also sent by certified mail a notice of intent to operate a surface mine to the appropriate planning officials. Adjacent and contiguous landowners were also sent certified notification letters of intent to operate a surface mine. The company proposes an immediate bonding of 40 acres with the remaining 166 acres to be bonded in the future as allowed. The proposed mine operation time frame is to the year 2040. During the 45-day public comment period following the initial publication of the public notice, the Staff Director received approximately 15 letters regarding Central Stone Company's proposed expansion application. The letters expressed concerns about blasting, property devaluation, mining in a residential area, private water wells, a high-pressure crude oil pipeline, noise pollution, travel way safety concerns, an Environmental Impact Statement, Lincoln County Stone's operation, impacts on business, request for permit denial, and other concerns. Central Stone Company has completed all requirements to obtain a permit under The Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letters, it is the Staff Director's recommendation to issue the permit expansion application involving a total of 206 acres in Lincoln County sought by Central Stone Company. The Staff Director's recommendation for approving this application is based on the conclusion that the public's health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act

does not weigh against the surface mining of minerals in this instance. Therefore, Mr. Zeaman stated the recommendation is to approve this application.

Mr. Steve Poplawski, attorney for Central Stone, stated the company agrees with the Staff Director's recommendation that the permit be issued without a hearing. Central Stone Company has met all of the permit requirements and has an excellent record as a quarry operator in Missouri and intends to continue that record at the Moscow Mills site. The neighbors' health, safety, and livelihood will not be unduly impaired by Central Stone's operation at this quarry. The fact that the quarry may be noisier and dustier and has more traffic cannot be a basis for having a hearing. If it were, then every permit would be subject to a hearing. The undue inherent language in the statute would be meaningless. The Commission, in the face of similar concerns about blasting, dust, traffic, and pipelines involving Central Stone's permits has granted those permits at three other quarry sites in Missouri. Just as the Commission approved those other permits, the Staff Director's recommendation and the record of the company and the staff's review all support denying the request for hearing and approving the application. Mr. Poplawski presented a letter from Koch Pipeline which reflects that while we agree with the Staff Director that this is not an issue for the Commission, as a good neighbor and responsible operator, Central Stone contacted Koch Pipeline regarding its concerns. The Company is working with Koch Pipeline to make sure that the number of charges, spacing between charges, all the detailed issues involved in a blasting situation in the pipeline proximity will be addressed. As a result, Koch Pipeline does not feel a hearing is necessary with regard to the safety of the pipeline.

Mr. Poplawski stated the other prior litigation is not an issue here. In that case, the permit was denied because of the impact on livelihood based upon a prior operator's violations. That former operator is an unrelated entity to Central Stone, and whatever happens in that litigation is irrelevant here. If the Commission grants a permit to Central Stone on this site, there will be a permit on this land and that's it. The prior case is irrelevant for purposes of granting this permit application to Central Stone Company.

Representative Wayne Henke, from the Lincoln County area, stated he had no problem with Central Stone Company. He stated he has a farm in Monroe County, and they have a quarry near him and have proven to be good neighbors and good stewards of the land. He stated he did have a problem with the proposed location of the quarry in Lincoln County. He stated his objection to the location of this quarry is that there are a lot of nice homes around this area. He noted that quarries do bring in economic development into an area, and the concrete and asphalt are needed in that area. However, there is a proposed strip mall to be located near this proposed quarry site. The mall would be a tremendous help to the economic development of the county. He questioned whether the proposed businesses for this mall would proceed if the quarry is allowed to open so closely. He

stated the people here today really want a meeting. Representative Henke asked that the Commission give the issue some time, allow the public to have their say, and use common sense when voting. He also stated he felt the Lincoln County Stone case now in the Circuit Court is an issue here because it was his understanding that the former operator still owns that land.

Mr. David Taylor, attorney representing Maridel Koenig, The RayMar Trust, Jerry Bickel Race Cars, Inc., and the Melvin Gerald Bickel, Jr., Trust, stated that Maridel Koenig and the RayMar Trust own property that adjoins the site of the proposed Central Stone Company quarry in Lincoln County. Jerry Bickel Race Cars also owns property immediately adjacent to the proposed quarry site. Part of the Koenig property that adjoins the quarry site is used as a fruit tree orchard. Orchards need the help of bees and bee hives to pollinate the trees. The Koenig orchard was an active business operation long before any quarry was planned for the adjoining properties. Jerry Bickel Race Cars is a business that employs 33 people and repairs and paints very expensive custom race cars.

Mr. Taylor stated it is not the Commission's function to decide whether or not a quarry is a good idea for this location. It is the Commission's function to follow the law as passed by the Missouri Legislature. That law changed dramatically as a result of actions initiated by citizens in Lincoln County. The old law, not relevant today, required the finding of a relationship between the violation history of a permit applicant and the impact on the health, safety, and livelihood of the individuals challenging the permit. That requirement is gone. The new law requires only that the issuance of the permit, being the permission to operate a quarrying activity at the site, will unduly impact the health, safety, and livelihood of the people making the challenge. It is agreed that Central Stone would be a better neighbor than the proposed previous operator. However, this is irrelevant to this challenge. In the previous case, we were forced to focus on a company's violation history because of the restrictions of the previous statute. Those restrictions were taken away by the Missouri Legislature, and we are not allowed to take into consideration the core issue of whether or not a quarry, any quarry, not just a quarry operated by a bad operator, but any quarry, would unduly impair the health, safety, or livelihood of its neighbors. That is what is relevant today. Mr. Taylor noted it is not the Commission's job to judge that issue today, but that job is much more limited. The Commission must determine whether or not there is a reasonable possibility that such a case can be made in an evidentiary hearing. That, he believed, means that the Commission is required to take a close, hard look at our case. First, regarding Maridel Koenig and the Koenig orchard, he noted he had provided a copy of the deposition of Dr. Raymond A. Nabors, as well as a letter from Mr. Ian Brown. This deposition was part of the original case. Dr. Nabors, who has a bachelor's and master's degree from the University of Tennessee and a Ph.D. from the University of Missouri-Columbia, is the

State apiculture specialist (bee keeping) employed by the University of Missouri Extension Service. Mr. Taylor stated there are two things the Commission should keep in mind when reviewing Dr. Nabors' testimony. First, Dr. Nabors was not a retained expert. Dr. Nabors offered testimony because he felt it was important for him to offer testimony as the State apiculture specialist, and he was not compensated. Secondly, as the Commission reads Dr. Nabors' deposition, it is clear that his testimony is not limited to the former Lincoln County Stone quarry or the Lincoln County site. His expert opinions encompass quarries in general and the negative aspects that they have on orchard operations. The bottom line is that quarries need to be kept away from orchards. According to Dr. Nabors' testimony (pages 8-13 of his deposition), there are three aspects of a quarrying operation that have a devastating impact on orchards. First, the blasting and vibrations and noises caused by the heavy equipment keep the bees stirred up and constantly interrupt their normal activity. Secondly, the dust from a quarry gets into the bees' wings, making them susceptible to infection and subsequent death. Third, the dust from a quarry impacts the trees in the orchard by interfering with the process of photosynthesis. In summary, Dr. Nabors states that he doubts that the bees will last a season. That prediction is particularly poignant, when compared with the letter from Ian Brown, the Koenigs' long-time bee keeper. Mr. Brown notes that for the few months that the Lincoln County Stone quarry was in operation, the honey production dropped from an average of between 100-150 pounds of honey per colony to an average of 40-60 pounds per colony.

Mr. Taylor stated there is a custom painting operation of race cars and the dust does not do the operation any good (Affidavit of Jerry Bickel). The race car painting operation was in business during the time of the Lincoln County Stone operation, and Mr. Bickel has stated that, as a result of the dust from that operation, he had to increase his time spent per car by 16 hours. In summary, Mr. Taylor stated there is not only a case for a hearing and that the evidence presented is sufficient.

Mr. DiPardo asked what type of surface do the county roads have in the area—are they paved?

Mr. Taylor stated that he felt that there are some roads that are not paved.

Mr. Gregg, Central Stone Company, stated that Highway 61 in front is paved and other paved short sections; but there are unimproved roads in the area.

Mr. DiPardo asked what is the road surface to the location of the bee owners?

It was noted that road surface is black top.

Mr. DiPardo noted that dust is dust, whether it comes from a quarry or a gravel road.

Mr. Smith asked whether Raceway Drive is paved?

Mr. Taylor stated he did not think that road is paved, but that Mr. Bickel did have plans to pave it.

Mr. Smith noted the dust could be coming from Mr. Bickel's road as well, since the quarry has been shut down for several years?

Mr. Taylor noted Mr. Bickel stated in his Affidavit that the increase in time was when the Lincoln County Stone quarry was in operation. The increase in time has not been required since the quarry stopped operation.

Mr. Smith asked whether Mr. Bickel's business was in the area first or the Lincoln County Stone quarry?

Mr. Taylor stated he did not know.

Mr. Smith stated he felt that point was important in that if the Lincoln County Stone quarry was operating and Mr. Bickel chose to select the particular site for his business, Mr. Bickel should have known of those hazards or could have anticipated it. He would then have impacted the financial welfare and livelihood of the original quarry.

Mr. James Sharkey, who also operates a paint shop for automobiles in the area, stated he lives along side of the quarry. Before the original quarry was there, there was a dirt road there also; and dirt problem was minimal. Now that the quarry has stopped, the dust problem is worse than before the quarry was there, because the wind is still blowing across the open areas and dust is continuing in the direction of his shop. It therefore does take more time to paint an automobile and clean it than before the quarry was there.

Mr. Paul Bass, who lives on the north side of the quarry and has about 300 feet of property line along the quarry, stated there is a large pile of rock left on the site from the other quarry from when it shut down in 2000. The winds continue to carry dust and debris from the quarry, across his property, which is approximately 800-1,000 feet from his home. He stated he has been subjected to the dust for the past three years, even though there is no quarry operation. Mr. Bass stated the Koch pipeline runs completely across his property, 300 feet, approximately 110 feet from the boundaries from the property line of the quarry. Mr. Bass stated the blasting over the next 30-40 years could cause a problem. Any kind of a leakage or problem with that will flood him and others because they are downhill from that pipeline. He questioned the relevancy of Koch's safety of their pipeline.

Mr. Poplawski, attorney for Central Stone, stated with regard to Koch pipeline, their letter indicates they will be well aware of what is going on as they have requested information on the configuration of explosive charges, the number of charges, spacing between charges, type of charge and weight, distance between pipeline and nearest charge, angle between pipeline and explosive line or grid, notify Koch at least 48 hours before work commences on or near Koch right-of-way, and no work shall take place place within 150 feet or other agreed to acceptable distance without Koch personnel being present.

Mr. Poplawski stated in reference to the deposition of Dr. Nabors, Dr. Nabors did not study the abrasive characteristics of limestone dust, the impact of a rock crusher, blasting activities within the area of a beehive, had not actually been to the site at the time of his testimony and relied on a street map, had not reviewed the specific hives in question. Mr. Poplawski stated Dr. Nabors has no expertise on limestone quarry operations, had no knowledge of air modeling with respect to the quarry, and has no knowledge of the proposed site of the quarry, no knowledge as to the annual total rock process, did not know the seismic study of the area, and did not know the distance that a blast would travel. Dr. Nabors also had no knowledge of any study with regard to impact of rock quarrying on bee hives. Mr. Poplawski stated he felt that the testimony of Dr. Nabors would not survive in a summary judgment proceeding.

Mr. Poplawski stated that with regard to dust, all statements have alluded to the prior owner. If Central Stone receives its permit and its air permit, it will be controlling the dust problem. The current problem is that no one is out there doing dust controls. Central Stone would then be doing this.

Mr. Jenkins asked what about the prior Lincoln County Stone decision? Would there be a problem if the Commission denied the hearing?

Ms. Randles stated the Lincoln County Stone case was based upon a prior statutory language and it interpreted that language which dealt with the issue of addressing past violations and considering whether to issue a permit. The issue of whether that was just a standing requirement with substantive guidelines that are supposed to guide the Commission was not decided by the Appellate Court. Ms. Randles stated the parties did not bring up that issue, so the court just said this is the standard that the Commission approved and so they proceeded to look at how the Commission had ruled based on the prior statute. Now there is a new statute, and the court did not interpret that language, so Ms. Randles did not believe the Lincoln County Stone Appellate Court decision provides much guidance here. The statute itself appears to give the Commission a very wide latitude on whether to grant or deny a public hearing request. There is a little more specific guidance when the Commission does grant a hearing as to how it makes its decision at the conclusion of the hearing, but it is wide open in terms of whether to grant or deny the hearing at the outset.

Mr. DiPardo made the motion that the Commission deny the request for a hearing and grant and issue the permit to Central Stone Company as stated by staff and Mr. Coen. Ms. Garstang seconded; motion carried. Mr. Jenkins voted "no."

Update on Holcim Hearing. Mr. Coen stated the hearing is still scheduled for February 19-21, 2003.

Coal: Request for Hearing – Alternate Fuels, Inc. (Attachment 5). Mr. Scott stated that in April 2000, the staff received a transfer application from Alternate Fuels. Responses and comments between the staff and the company continued for several months. As a result of findings of the Office of Surface Mining concerning ownership and control, the Staff Director issued a letter in October 2001, requesting the company submit the correct ownership and control information within 65 days. The company was informed that the permit was prohibited from being transferred because of the company's unabated Notices of Violation relating to the transferee's coal mine related activities in Oklahoma. In Alternate Fuels' Settlement Agreement, it was required to resolve its ownership and control issue. However, the ownership and control issue at Alternate Fuels remains unresolved. As such in accordance with applicable regulations and permitting guidelines and at the recommendation of the Missouri Attorney General's Office, the Staff Director denied Alternate Fuels' permit revision request to transfer their mining permits to new owners. In a letter dated December 20, 2002, Alternate Fuels has requested a hearing before the Land Reclamation Commission regarding this decision. Therefore, the Commission needs to appoint a hearing officer to preside over such a hearing.

Mr. Hull made the motion to grant the hearing requested by Alternate Fuels and that the request be referred to the Administrative Hearing Commission for hearing. Mr. DiPardo seconded; motion carried. Mr. Jenkins abstained from voting.

Update of Permitting Reviews (Attachment 6). Mr. Scott presented this update to the Commission.

Chairman Smith left the meeting at 12:10 p.m.

5. MINING ENFORCEMENT ACTIONS

Settlement Agreement, Delta Asphalt, Inc. (Attachment 7). Mr. Larsen stated that following a site inspection of the company's two quarries, two Notices of Violation were issued to the company for field deficiencies noted during the inspection. Following receipt of the Notices and assessments, the operator requested an informal conference which was held in October 2002. Following the informal conference, the Staff Director offered a Settlement Agreement affirming both violations, but reducing the penalty

assessment for Notice of Violation 312-001 from $490.00 to $450.00. The penalty assessment for Notice of Violation 312-002 was affirmed at $490.00. The company accepted and signed the Settlement Agreement. Therefore, the staff recommends that the Settlement Agreement be approved by the Commission.

Mr. Hull made the motion the Commission approve the Settlement Agreement as presented for Delta Asphalt, Inc. Mr. Jenkins seconded; motion carried unanimously.

Hearing Request on Formal Complaint, National Refractories and Minerals Corp. (Attachment 8). Mr. Larsen stated that at its November 2002 meeting, the Commission signed Notice of Formal Complaint No. 2652 for National Refractories and Minerals Corp. The Formal Complaint was issued in response to the company's failure to abate one Notice of Violation issued to the company in Novmber 2001. Following receipt of the Formal Complaint by the company, the company did request a hearing be held to review the Formal Complaint. The staff therefore recommends the Commission grant the hearing and appoint a hearing officer to hear the matter.

Mr. Jenkins made the motion that the Formal Complaint for National Refractories and Minerals Corp. be set for a hearing and referred to the Administrative Hearing Commission to hold said hearing. Ms. Garstang seconded; motion carried unanimously.

Midwest Coal, L.L.C., Notice of Violation P97-02-74 and Cessation Order CO97-02-74 (Attachment 9). Mr. Sharp stated Notice of Violation P97-02-74 was issued to the Company for its failure to pay the annual $100.00 permit fee due on May 17, 2002. The Company was given seven days to abate the violation. As of June 17, 2002, the violation was still unabated. Therefore, Cessation Order CO97-02-74 was issued. The violation was assessed a penalty point total of 43 points which corresponds to a monetary penalty of $2,300.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-73 and Cessation Order CO97-02-73 (Attachment 10). Mr. Sharp stated an inspection conducted on May 21, 2002, revealed the company had begun construction of a diversion prior to submitting the required engineering designs and obtaining written approval from the Staff Director. As a result, Notice of Violation P97-02-73 was issued. The company was given 30 days to abate the violation. A July 9, 2002, inspection revealed the company had failed to abate the violation; therefore, Cessation Order CO97-02-73 was issued. The violation was assessed a penalty point total of 56 points which corresponds to a monetary penalty of $3,600.00, and the Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-70 and Cessation Order CO97-02-70 (Attachment 11). Mr. Sharp stated that during an inspection conducted on April 16, 2002, it was noted that the company had failed to construct a permanent impoundment to the approved designs and failed to properly backfill and grade areas within 180 days of coal removal. As a result, Notice of Violation P97-02-70 was issued. The company was given 30 days to abate the violation. A July 9, 2002, inspection revealed the company had failed to abate the violation; therefore, Cessation Order CO97-02-70 was issued. The violation was assessed a penalty point total of 55 points which corresponds to a monetary penalty of $3,500.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-69 and Cessation Order CO97-02-69 (Attachment 12). Mr. Sharp stated that during an inspection conducted on April 16, 2002, it was noted that the company had failed to complete backfilling and grading of a haul road area within 180 days of becoming inactive. As a result, Notice of Violation P97-02-69 was issued. The company was given 30 days to abate the violation. During a July 9, 2002, inspection, it was noted that the company had failed to abate the violation; therefore, Cessation Order CO97-02-69 was issued. The violation was assessed a penalty point total of 65 points which corresponds to a monetary penalty of $4,500.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-68 and Cessation Order CO97-02-68 (Attachment 13). Mr. Sharp stated that an April 16, 2002, inspection revealed that the company had failed to remove rocks and other debris from topsoiled areas as per the Land Use Establishment Information Section of the permit. As a result, Notice of Violation P97-02-68 was issued. The company was given 15 days to abate the violation. During a June 4, 2002, inspection, it was noted that the company had failed to abate the violation; therefore, Cessation Order CO97-02-68 was issued. The violation was assessed a penalty point total of 55 points which corresponds to a monetary penalty of $3,500.00. Mr. Sharp stated the Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-67 and Cessation Order CO97-02-67 (Attachment 14). Mr. Sharp stated that during an inspection conducted on April 16, 2002, it was noted that the company had failed to remove topsoil from a work area prior to disturbance, resulting in compaction of the topsoil. As a result, Notice of Violation P97-02-67 was issued. The company was given 30 days to abate the violation. A July 9, 2002, inspection revealed that the company had failed to abate the violation;

therefore, Cessation Order CO97-02-67 was issued. The violation was assessed a penalty point total of 49 points which corresponds to a monetary penalty of $2,900.00. Mr. Sharp stated the Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-64 and Cessation Order CO97-02-64 (Attachment 15). Mr. Sharp stated that during an April 16, 2002, inspection, it was noted that the company had failed to properly distribute topsoil consistent with the approved surface water drainage system and post-mining land uses. Also, there was a shortage of non-prime topsoil, leaving a 17-acre area without topsoil. As a result, Notice of Violation P97-02-64 was issued. The company was given 30 days to abate the violation. A June 4, 2002, inspection revealed that the company had failed to abate the violation; therefore, Cessation Order CO97-02-64 was issued. The violation was assessed a penalty point total of 65 points which corresponds to a monetary penalty of $4,500.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-63 and Cessation Order CO97-02-63 (Attachment 16). Mr. Sharp stated an April 16, 2002, inspection revealed that the company had failed to stabilize erosion as well as properly construct and maintain temporary sediment control. As a result, Notice of Violation P97-02-63 was issued. The company was given seven days to abate the violation. A June 4, 2002, inspection revealed that the company had failed to abate the violation; therefore, Cessation Order CO97-02-63 was issued. The violation was assessed a penalty point total of 48 points which corresponds to a monetary penalty of $2,800.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Delinquent Reclamation N97-02-62 and Cessation Order CON97-02-62 (Attachment 17). Mr. Sharp stated an April 16, 2002, inspection revealed that the company had failed to topsoil 6 acres of graded spoil within the 270-day time frame. Mr. Sharp stated that, as a result, Notice of Delinquent Reclamation N97-02-62 was issued. The company was given 30 days to abate the violation. During a July 9, 2002, inspection, it was noted that the company had failed to abate the violation; therefore, Cessation Order CON97-02-62 was issued. The violation was assessed a penalty point total of 62 points which corresponds to a monetary penalty of $4,200.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Delinquent Reclamation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-61 and Cessation Order CO97-02-61 (Attachment 18). Mr. Sharp stated an April 16, 2002, inspection revealed that the company had failed to properly maintain several designed structures, as well as

some temporary sediment control structures. As a result, Notice of Violation P97-02-61 was issued. Mr. Sharp stated the company was given 7 days to repair the erosion and 30 days for diversion construction. A June 4, 2002, inspection revealed that the company had failed to abate the violation; therefore, Cessation Order CO97-02-63 was issued. The violation was assessed a penalty point total of 60 points which corresponds to a monetary penalty of $4,000.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Notice of Violation P97-02-60 and Cessation Order CO97-02-60 (Attachment 19). Mr. Sharp stated that during an inspection on February 27, 2002, it was noted that the company had failed to complete backfilling and grading of 4 acres within the required 180-day time frame following the removal of coal. As a result, Notice of Violation P97-02-60 was issued. The company was given 30 days to abate the violation. A May 21, 2002, inspection revealed that the company had failed to abate the violation; therefore, Cessation Order CO97-02-60 was issued. The violation was assessed a penalty point total of 59 points which corresponds to a monetary penalty of $3,900.00. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

Midwest Coal, L.L.C., Cessation Order CO97-02-39 (Attachment 20). Mr. Sharp stated that on May 30, 2002, Notice of Violation P97-02-39 was issued to the company because the company began construction of a diversion prior to submitting the required engineering designs and obtaining written approval from the Staff Director. On June 20, 2002, Cessation Order CO97-02-39 was issued for the company's failure to abate the violation. The Cessation Order was assessed $750.00 for 30 days or a total of $22,500.00. To date, both the Notice of Violation and Cessation Order remain unabated.

The staff recommends that since all time frames for appeal have expired, that the Commission confirm both the fact of the violations and Cessation Orders and the proposed penalties, as assessed for Midwest Coal, L.L.C., as well as authorize the staff to refer the assessments to the Missouri Attorney General's Office for collection if payments are not received within 30 days of receipt of the Orders to pay.

Ms. Garstang made the motion that the Commission confirm the fact of the Notices of Violation and Cessation Orders and assess the monetary penalties as presented for the above violations and Cessation Orders and authorize the staff to refer the assessments to the Missouri Attorney General's Office for collection if payment is not received within 30 days of receipt of the orders to pay. Mr. Hull seconded; motion carried unanimously.

Enforcement Action Tracking Report (Attachment 21). Mr. Cabanas presented this report to the Commission.

6. BOND RELEASE REQUESTS

Industrial Minerals:

Summary of Industrial Minerals Bonds Released by Staff Director (Attachment 22). Mr. O'Dell presented this report to the Commission. He stated the Staff Director has reviewed, evaluated, and approved one Industrial Minerals bond release request since the November 2002 Commission meeting. This request is for a total of 32 acres of Pasture for Kelly Lime & Rock Co., Inc., Site #1, for a total release amount of $16,000.00.

7. OTHER BUSINESS

Land Reclamation Program Employees of the Month for December and January – Mr. Coen noted the LRP Employees of the Month for December and January were Richard Hall and Steve Femmer, respectively.

Proposed Coal Rule Amendments (Attachment 23). Mr. Cabanas stated the staff is requesting the Commission's approval to proceed with the rulemaking process for these rule amendments. These amendments are mainly the result of federal rule changes that the Office of Surface Mining requires the State to pass as well. These amendments will bring the Program up to date with this particular rulemaking process. If the Commission gives the approval to proceed, the proposed amendments will be sent out to the coal industry and consultants for an informal review in order to inform them of the proposed changes and solicit comments. The attachment summarizes each of the rule changes.

Mr. Jenkins made the motion to authorize the staff to proceed with the rulemaking process. Mr. Hull seconded; motion carried unanimously.

Update to Coal Administrative Guidelines (Attachment 24). Mr. Cabanas stated that in addition to the set of rules that the Office of Surface Mining wanted the Program to promulgate, they also, as part of their review of Missouri's regulatory program, provided comments about the Program's administrative guidelines with regard to the Phases II/III Revegetation Success Standards for Prime Farmland. These are not rules, they are guidelines. However, the Office of Surface Mining considers them part of the Missouri regulatory program; and, as such, if they do not mirror what the Federal Government says, they do not consider our Program to be in compliance. The Office of Surface Mining has therefore suggested changes to these guidelines as per the attachment. The way the Program adopts guidelines is that the Commission has to formally adopt them. The change has already been implemented over the past few years, and the coal industry has been made aware through general practice regarding Phase III requirements. The staff therefore recommends that the Commission adopt these guidelines as presented.

Mr. Hull made the motion that the Commission approve the changes to the guidelines as recommended by staff. Mr. Jenkins seconded; motion carried unanimously.

Review Time Frames for Coal Permit Revisions (Attachment 25). Mr. Cabanas stated this is a notification to industry that the Program is returning to procedures listed in the Program's guidelines for review of permit revisions. In the past, the staff has allowed companies to respond to staff comments on permit revisions at their own timetable. However, based upon advice the staff has received from the Attorney General's Office, the Program needs to follow its guidelines as they are written which state that the "permittees will be allowed sixty (60) days to respond to staff comments. If a response is not received within the specified time frame, the Program will issue a letter of warning stating that failure to respond within fifteen (15) days of the warning, will cause the processing of the revision to be terminated and the one hundred dollar ($100.00) revision fee to be forfeited." The reason for this is that the staff currently has several outstanding current revisions, some of which have had considerable time without any response from the operator.

Mr. Phil Tearney, Continental Coal, stated his company does not have a problem with this change, but he felt there should also be an improvement in the response time by the staff. He stated in the past, the company has waited longer than 60 days to get comments from the staff, which impacts his company.

Mr. Cabanas stated that if an item is returned to a company for lack of response, the company has the option of requesting a formal hearing.

Mr. Ziehmer asked what is the average turnaround time for staff?

Mr. Cabanas stated he did not have that information at the present time, but could present the information at the March meeting.

Update on In-Stream Gravel Mining Rules Work Group (Attachment 26). Mr. Larsen stated in July 2002, the Commission instructed the staff to form a work group to look at the proposed Water Pollution Control Guidelines and to develop rules for these guidelines. Since July, after holding a public hearing and various public meetings around the State, the Commission decided the best course of action was to assemble a work group, comprised of a large number of interested persons on this issue, with the end result being that the work group would make a recommendation to the Commission. The process has been completed. Four meetings were held since July 2002, the last meeting being held in December 2002. The 15 guidelines were each discussed in great detail by the work group. It was apparent throughout the process that the work group would not be able to reach a unanimous consensus on each recommendation. There are several

recommendations from the work group which resulted in options for the Commission's consideration. Mr. Larsen noted that the Commission should have received a booklet of information relative to this process and the recommendations of the work group for the Commission's consideration. Mr. Larsen presented additional information to the Commission referred to as Attachment G which contains letters of concern and dissenting opinions concerning the in-stream sand and gravel mining rules. The staff will continue to provide copies of letters from the public to the Commission as they come in. Therefore, the staff recommends that the Commission consider all information provided by the work group, as well as all comments received concerning the process and recommendation generated, and hold a special open meeting of the Land Reclamation Commission in order to discuss and decide upon which recommendation for each proposed rule the Commission will select. The final staff's recommendation is to allow staff sufficient time to notify all interested parties of the date selected by the Commission for this meeting, this time period being at least 30 days notice.

Mr. Larsen noted that a letter to the Commission from Representative Mark Hampton supports the guidelines remaining as guidelines.

Mr. Larsen stated the staff became aware of a bill (No. 360) introduced by Senator Sarah Steelman. This bill, if passed, would eliminate any operator mining gravel less than 5,000 tons per year from any type of jurisdiction by the Land Reclamation Commission.

Mr. Hull asked how many operators would be left if this bill was passed?

Mr. Larsen stated the Program's total permitted in-stream gravel mining companies, not floodplain, is 146 companies. According to the Program's records, 108 of those companies are under 5,000 tons. Mr. Larsen stated if this bill passed, approximately 75 percent of the total in-stream sand and gravel companies would not be required to obtain a permit or to adhere to any requirements of the law or this Commission.

Mr. DiPardo asked if the exempt companies could then do whatever they wanted?

Mr. Larsen stated this would be a Land Reclamation Act exemption and would not exempt the companies from Water Pollution Control Program or the Air Pollution Control Program requirements. There may also be local laws in the area where the companies operate that may have to be adhered to.

Ms. Garstang asked what about floodplain operators?

Mr. Larsen stated there are a large number of floodplain operators in the State, but he did not believe those operators are under 5,000 tons. He offered to obtain that number for the Commission. Mr. Larsen stated it was his understanding that Bill 360 would exempt

gravel operators, not just in-stream sand and gravel operators. Mr. Larsen stated it may apply to any floodplain operator who is under the 5,000-ton amount.

Mr. John Wenzlick, Council Chairman, Trout Unlimited, submitted a written comment which states: "Trout Unlimited urges the Commission to adopt some set of rules for sand and gravel mining operations. We participated in the work group and think that the rules are a good compromise and will be good for Missouri streams."

Ms. Linda Garrett, Commissioner from Texas County, stated regulations would hurt the economic well-being of Texas County. She stated the 5,000-ton proposal would still hurt the operators in that county.

Mr. Bob Parker, Texas County Farm Bureau, stated Texas County is unique in that it is in the headwaters area of several rivers which start in Texas County. The gravel mining done in Texas County is on small, narrow streams and gravel bars. Texas County is the largest county in the State. One operator in the county has increased to 17 sites from 4 sites in trying to comply with guidelines that have been added during the past years, which has added to the operator's costs. The streams in the county are relatively shallow and are filling in with gravel. There really haven't been any studies done in Missouri as to what happens in the gravel-rich streams. The studies that have been done are for other parts of the country and indicate that there is very little impact by mining operations in gravel-rich streams. Some streams in Texas County have rock bottoms and aren't affected by headcutting that occur in streams in the desert southwest portion of the country. Mr. Parker stated he wanted the science to fit the area in Texas County. Another issue is the buffer area issue. A proposed 20-foot buffer back from the river and 20 feet back from the bank leaves little gravel to mine. Most of the gravel bars aren't that wide in Texas County. Mr. Parker stated operators in that county have indicated that this would force the operators to shut down if such a regulation came into effect. A local gravel miner was able to save the State $.5 million in concrete costs in the building of the prison in Licking. There would be savings to being able to use local gravel for building projects in the area, as opposed to having to haul it from outside of the area. Mr. Parker stated that in reference to accusations that miners have asserted that they are not responsible for anything that happens after they leave an in-stream mining site, Mr. Parker stated the miners who were talking about this were talking about after they had done everything to reclaim that site. A flood could come in and do damage to that same area. The mining operator would not be responsible for excessive flood damage. He did not feel that any of the mining operations in the area had taken the position that they were not responsible for any damage to the environment. Just developing these guidelines and forcing everyone to comply with them would be a change to all of the operations which would be an increase in costs.

Mr. Ziehmer asked Mr. Parker as far as the way that Farm Bureau voted on the work group's recommendations, did he feel that Farm Bureau saw them as workable?

Mr. Parker stated Farm Bureau voted on keeping the guidelines as guidelines. This position was adopted at their annual meeting. Mr. Parker stated he felt the guidelines that the gravel industry proposed and the vote the work group took to be workable. Farm Bureau's concern was that they would be adopted as regulations versus guidelines as it would prefer the guideline approach in working with operators. He felt that would work.

Ms. Betty Adams, landowner, requested that the guidelines remain as guidelines. The streams being referred to are private property. She stated the Roubidoux goes 1-1/2 miles through her property on both sides, and she stated she owns it. Through the statutes of the Supreme Court, it is considered a Third Class river and that she owns it totally. Rules don't always protect you.

Mr. John Kosmicke, member of the property rights group, stated the right to own property is a basic right, and when that is messed with, such as government agencies, it is not good. Gravel is one of the heaviest materials. The streams cleans up right away. If there was light material or mud, then it could go on. He stated he agreed with Bob Parker's statements.

Mr. Dennis Rains, property owner, stated that 5,000 tons of gravel would be equivalent to about 25 train carloads. That is an idea of what the small operations consist of.

Mr. Robert Temper, Ozark Fly Fishers, stated the organization supports all efforts for improvement of outdoor environment, particularly our streams and lakes; limit our kill and not kill our limit and release the majority of fish caught; and advise, educate, and assist in promoting the art of fly fishing. Mr. Temper stated the organization endorses the establishing of rules for gravel mining. This will be a positive step in protecting the natural resources of our state. With effective rules in place, there is continued opportunity for everyone to realize positive gains from the resources available without sacrificing the future of those resources for any one interest. Mr. Temper stated gravel is a resource, but so are the streams where it is located. Neither need be sacrificed for the other. Rules are the standard by which all are measured and held accountable. Gravel mining can adversely affect stream resources such as the physical characteristics of the stream itself, its inhabitants, and the adjacent wildlife community. Mining activities can capture the stream altering flow, both upstream and down. It can affect water quality and cause turbid water during or following the mining process. The process can have an impact on oxygen level, sediment in spawning areas, water temperatures, in-stream and streamside vegetation and bank erosion. It can also have a long lasting effect on the aesthetics of the surrounding area. With effective rules, these potential problems can all be prevented and without additional expense to the industry or the State. Rules provide

an opportunity for prevention of problems without having to wait for gross injustices. Mr. Temper stated development of meaningful rules will provide leadership for the gravel mining industry and protect the resources of the State.

Mr. Riley Godfrey, a landowner, stated the Supreme Court has ruled that those rivers must be regarded as public navigable rivers…when they are used in their ordinary condition as highways of commerce. (By Ordinance of 1787, U. S. Supreme Court) He stated he was surprised that the Land Reclamation Commission would pass down a directive to the Land Reclamation Program to even be in on this when it can be seen by the laws that they do not control it. Mr. Riley stated he would recommend that the Commission obtain a serious reading on this as there have already been two, one filed by the Missouri Attorney General in June 1998 and the second one was in the State of Illinois. He questioned whether the Commission had the authority to pass these rules. Class A streams shall be those streams that are navigable and floatable—the Missouri and Mississippi Rivers. Class C streams are those that are not navigable, but floatable. Who owns these Class C streams? As stated in the ordinance, these Class C streams are owned by the landowner; and the owner could have anyone arrested for trespassing. The majority of the gravel comes out of these Class C streams. The rules would charge the owner for a permit for his own product. The boundary when a stream comes by until it passes that division line is the property of the owner above. Once it passes the division line, it is your property, gravel and water, until it passes the division line on the other side. One property owner cannot go on someone else's land where there is a water hole below the division line to water your cattle without that property owner's permission. Mr. Riley suggested the Commission look into these rules further to make sure it is clear what it is doing.

Mr. Russell Wood, President of the Ozark Chapter of the Property Rights Founders Group, stated they supported the latest wording as opposed to the original wording of the proposed rules. He noted the statement that the landowners could very well live with and endorse is the declaration of policy found in the statute of The Land Reclamation Act.

Mr. Richard Dellerman stated that each landowner assumes they have the right to everything on their land and let county guidelines govern and also have a county meeting so the residents can vote on an issue. Mr. Dellerman stated when it comes to regulating taking gravel from your own land, it might end up with having to get permission to get trees off your own land. He stated it was up to the Commission to decide whether what the people think is fair or go by some dictates from the Federal Government that come down to the states. He hoped it would go back to listening to the people and what they have to say.

Mr. Jim Dunn, Administrative Assistant to Sarah Steelman, stated a meeting between Senator Steelman and Department of Natural Resources staff was held regarding Bill 360.

Mr. Dunn stated this bill, as proposed, would exempt operators under 5,000 tons. The Senator feels there doesn't need to be any more rules. The Senator feels that the guidelines that have been used in the past have worked very well.

Mr. Coen stated there are still some concerns about using the number 5,000 as the proper exemption amount.

Mr. Ted Heisel, Missouri Coalition for the Environment, stated he felt that the membership of the work group was not reflective of the State of Missouri. The group was very tilted towards persons who do not feel there is a need for these rules. The Commission should consider the broader public opinion when considering all of the options. He stated that he hoped that the Commission would have an opportunity to review the science that does support the need for regulations which was previously used to justify the current guidelines. Guidelines do not provide for the enforceability in a situation where there is a problem with an operator. He stated he felt the proposals should go through the rulemaking process. He noted several problems with several proposals. One is with reference to buffers in that the proposed rule does not set any standard. For smaller streams, if a variance is needed to do that, there should be a rule in place that can be followed and enforced and do a variance from there rather than guessing at what buffer is appropriate. With regard to depth of mining, he feels that mining should not go below a certain point, as this could cause the stream to go somewhere else or cause erosion. The Department of Natural Resources has designated about 20 outstanding state resource waters and 3 outstanding national resource waters in the past. These are either segments of streams or low bodies of water. These are waters that the state has identified as being very important, they are recreational type streams, and considered very pristine streams. Mr. Heisel stated what the draft regulations would do is remove a pre-existing prohibition on gravel mining in those streams. He stated he felt that would be a step in the wrong direction. There are possibly some streams that should not be on that list. Regarding the issue of endangered species, the guidelines would place a burden on the applicant to consult whether there were endangered species. The work group developed a compromise which would require the Department of Natural Resources to keep a list so they know where the species are and can advise the applicant if there might be endangered species on a site and enable the applicant to draw up the permit application accordingly.

Ms. Carla Klein, Chapter Director for the Sierra Club, stated rules are needed to deal with persons who do damage to our streams and there is a recourse.

Mr. Larsen stated the recommendation is that the Commission hold a special meeting prior to the March Commission meeting. This would allow the staff enough time to notify everyone of that meeting and allow the public time to write their comments to be submitted to the Commission for consideration. Mr. Larsen stated the purpose of that

meeting would be for the Commission to look at the recommendations proposed by the work group and select the best proposal to be included in the final version of proposed rules.

Mr. Ziehmer asked whether it would be possible for the staff to provide a companion product that would pull the statements that received preferred votes in rule form, just for ease in reading?

Mr. Larsen stated it is possible.

Mr. Jenkins made the motion that a special public Commission meeting be held on March 26, 2003, at 10:00 a.m. for the purpose of discussing the proposed in-stream gravel mining rules. Mr. Hull seconded; motion carried unanimously.

Industrial Minerals Activity Report Required by Section 444.772.4 of The Land Reclamation Act (Attachment 27). Mr. Coen stated the 2001 change to The Land Reclamation Act requires the Program to report on income and expenses and activities of The Land Reclamation Act with regard to quarries. He presented this report to the Commission as contained in Attachment 27.

Closed Session. Mr. Jenkins made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on March 27, 2003, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. Hull seconded; motion carried unanimously.

Adjournment. The meeting was adjourned at 2:35 p.m.

Respectfully submitted,

Chairman